# IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

***FAO(MVA) NO.594 of 2003***

***Judgment Reserved on: 24.4.2007***

***Date of Decision: 9. 5.2007***

**National Insurance Company**

**…….Appellant**

**Versus**

**Pyar Singh and Ors. ……. Respondents.**

**Coram**

***The Hon'ble Mr. Justice Kuldip Singh,Judge***

**Whether approved for reporting? No.**

**For the Appellant : Ms. Sunita Sharma, Advocate.**

**For respondent No.1& 2 : Mr. G.R. Palsra, Advocate.**

**For respondent No.4 : Mr.B.K. Malhotra, Advocate.**

***Kuldip Singh, J***

This appeal is at the instance of National Insurance Company-appellant-respondent No.3 against the award dated 30.9.2002 passed by learned Motor Accident Claims Tribunal(II) , Mandi, H.P. in Claim petition No,120 of 1998, awarding Rs.1,25,000/- compensation (inclusive amount awarded under Section 140 of the Motor Vehicle Act), in favour of the petitioners to be equally shared by them and against respondent No.3 with interest at the rate of 9% per annum from the date of filing of the petition till realization.

The parties in this judgment are referred in the same manner as in the impugned order.

The brief facts as pleaded by the petitioner are that Vijay Kumar

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W*hether reporters of Local Papers may be allowed to see the Judgment? Yes*

son of the petitioners died in the accident involving jeep No.HP-39-8081 which took place on 19.5.1998 at about 5.15 A.M., near Army transit Camp, Sayogi on National High Way 21 pandoh. It has been alleged that accident had taken place due to rash and negligent driving of respondent No.2. An FIR No.200/98 was registered at Police Station, Sadar, Mandi on 19.5.1998. The respondent No.1 is owner and respondent No.3 is the insurer of the vehicle. The petitioners claimed Rs.10,00,000/- compensation on account of death of their son Vijay Kumar. The further case is that on 19.5.1998 deceased Vjay Kumar was walking on extreme corner of the road, the jeep was being driven in a rash and negligent manner by respondent No.2 struck deceased on his back and knocked down the deceased as a result of which he sustained head injuries and died on the road. The deceased was 26 years of old. He was a student of M.A. Economics, in the Post Graduate College, Mandi. The deceased had bright future.

The owner of the vehicle filed reply. It has not been denied by him that at the time of accident the respondent No.2 was driving the jeep. However, it has been submitted that he engaged Sanjeev Kumar as driver. The accident was not the out come of the rash and negligent driving of respondent No.2. The respondent No.2 was driving the vehicle against the prohibition of driving the jeep by any person other than the authorized driver Sanjeev Kumar. The amount claimed is excessive.

The Insurance Company filed reply and has submitted that respondent No.2 was not having valid and effective licence. There was breach of terms and conditions of the Insurance Policy and as such, Insurance Company is not liable to indemnify the owner. The compensation claim is highly excessive. The Tribunal in issue No.1 has held that accident has taken place due to rash and negligent driving

of the vehicle at the time of accident. In issue No.2, it has been held that the petitioners are entitled to Rs.1,25,000/- compensation and in issues No.3 and 4 it has been held that even if, any one out of respondent No.2 or Sanjeev Kumar were driving the vehicle at the time of accident still Insurance Company is liable to pay compensation.

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the respondent No.3-Insurance Company has submitted that at the most at the time of accident respondent No.2 was holding learner's licence and therefore he violated rule 3 of the Central Motor Vehicle Rule 1989 ( for short 'Rules') while driving the jeep at the time of accident. It has been submitted that Sanjeev Kumar was authorized person to drive the vehicle and the driver did not possess valid and effective licence at the time of accident. The Insurance Company is not liable to pay any compensation.

The learned counsel for the respondents has supported the impugned award.

The breach of policy is to be proved by Insurance Company. In the reply of Insurance Company there is general plea that driver who was driving the vehicle at the time accident was not having valid and effective license. The Insurance Company has not taken any specific plea what was the defect in the licence. It has not been pleaded that any person with effective and valid licence was not instructing the driver who was driving the vehicle at the time of accident. The Rule 3 is as follows:-

> "***The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as-***

***(a)*** ***such person is the holder of an effective learner's licence issued to him in Form 3 to driver the vehicle;***

***(b)*** ***such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and***

***(c)*** ***there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:-***

| ***L*** |
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RW-1 Suresh Suneja has proved Insurance Policy Ex.RW-1/A, Registration Certificate of the vehicle Ex.RW-1/B and the Driving Licence of Sanjeev Kumar Ex.RW-1/C, who according to him was the driver of the jeep. RW-2 Ajay Kumar has stated that on 19.5.1998 he was going with Sanjeev Kumar to Kullu. Sanjeev Kumar was driving the jeep No.HP-39-8081 as driver. He was having learner licence and he would produce copy of said licence on the next date of hearing which was produced by counsel representing Ajay Kumar on 26.7.2002.

It is thus clear that even if, respondent No.2 was driving the jeep at the time of accident he was having learner's licence. The competency and authority of the person having learner's licence to drive a vehicle is no more res integra in view of decision of the Apex Court in ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors. (2004) 3 SCC 297***. In this case, the Supreme Court has held as under:-

> ***"93. The Motor Vehicle Act, 1988 provides for grant of learner's licence. [ See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus also a licence within the***

***meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.***

***AND***

***"94 The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed there under. It is now a well settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."***

***The Supreme Court has further observed as follows:***

> ***"110(viii). If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree***."

This Court also in FAO(MVA) No.219 of 2001 decided on 20.4.2007 has held that Insurance Company is liable to pay compensation to the claimants regarding an accident which has taken place when the vehicle was being driven by the driver having learner's licence.

In view of above discussion, the Tribunal has rightly held that the Insurance Company is liable to pay compensation to the petitioner in the present case by holding that accident has taken place due to rash and negligent driving of the driver of the vehicle at the time of accident.

The Insurance Company has failed to make out any case for interference. The finding recorded by Tribunal that Insurance Company is liable to pay compensation to the petitioners as the accident has taken place due to rash and negligent driving of the driver who was driving the vehicle requires no interference.

No other point was urged.

In view of above discussion, the appeal is dismissed. Impugned award is upheld. The parties are left to bear their own costs.

***( Kuldip Singh)***
***Judge***

***May 9 , 2007***
***(sks***)